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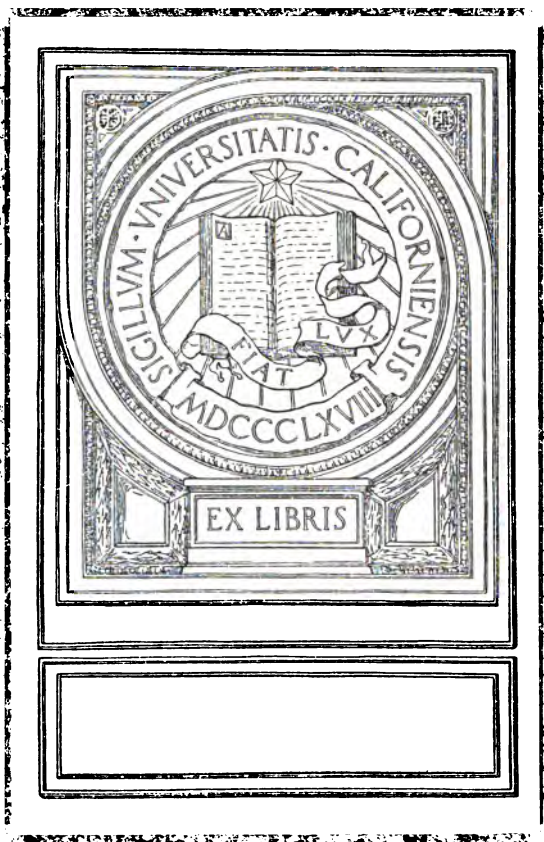
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THE EFFECT
OF
RESTRICTIVE LEGISLATION
UPON THE
Railways of Wisconsin
AND THE
MATERIAL INTERESTS OF THE STATE.

DISCUSSED BY
J. W. MIDGLEY.

CHICAGO:
CULVER, PAGE, HOYNE & Co., PRINTERS.
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PREFACE.

TO THE PUBLIC :

The actual effect of the recent legislation in regard to railways being but indifferently understood by the community at large, the undersigned requested Mr. JOHN W. MIDGLEY, of Chicago, who has given much study to the question of transportation, to investigate the operations of the Potter law and kindred acts, and submit for publication the result of his observations. The following reply is remarkably pertinent to the present state of the controversy, and will throw much light upon the entire question. It is deserving of the most careful consideration, both of those who enact our laws and of the people whose interests are affected thereby.

ALEX. MITCHELL,

President Chicago, Milwaukee & St. Paul Ry. Co.

ALBERT KEEP,

President Chicago & North-Western Ry. Co.

MILWAUKEE, January 5, 1876.

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DISCUSSION

UNIV. OF
CALIFORNIA

OF THE EFFECT OF

RESTRICTIVE RAILWAY LEGISLATION.

A candid view of the relations sustained by the people and the railways discovers this cardinal point of agreement: *Whoever renders a desired service is entitled to just compensation.* It is a natural right, an inviolate truth. "The laborer is worthy of his hire."

This principle being established, it becomes necessary to consider

WHAT IS A REASONABLE RATE.

Were it agreed upon, this controversy would cease. But men differ, hence adjudications are required. The Legislature may declare that the rates *shall* be reasonable: *whether they are or not*, is a matter for the courts to decide.

Such question is new to our tribunals. Familiar though complaints of extortion have become, no issue has been made to determine the measure of reasonableness. One case, however, is reported, wherein the court said: "It is agreed by all the books that, while the carrier enjoys the privilege of a common carrier, it is a duty he cannot escape in any form to receive goods, if he has room to carry them, for a reasonable reward; and *the reasonable reward may be set down as the accustomed reward for like services.*"*

Kent also defines it to be a "reasonable or *customary* price."†

This corresponds with the English rule, which is stated thus: "It is to be supposed that a common carrier can afford to carry *at much the same rate of hire as that which is exacted universally by carriers similarly situated*, and which, if it has been found to remunerate them, may, upon the best grounds, be called reasonable. The word reason-

* *Cole v. Goodwin*, 19 Wendell [N. Y.], 261.

† 2 Kent's Commentaries, 599.

able, therefore, is to be the criterion of the price which a common carrier has a right to demand."*

Nor will this construction be denied. It conforms to the judgment of reasonable men. Therefore it is claimed there is no disposition in Wisconsin to deny the railway companies just compensation for their services. This profession has been repeatedly made. It was announced in the appellate court, has been echoed through the press and on the platform. Speaking for the people, their representatives said: "Show us that the rates fixed by law are not reasonable and we will make them just."

Relying upon that assurance, and inviting attention to the method, I purpose to demonstrate the unreasonableness of the rates now imposed on Wisconsin railways and establish their claim to immediate relief.

The rule, as already stated, has been prescribed. Taking the standard given, a difficulty arises in the varying circumstances of roads. No two are alike. Still, many are sufficiently so to admit of tolerably fair comparison. The oft-recurring phrase "like circumstances" has been authoritatively construed. It is decided that "things are conveyed under 'like circumstances' where the labor and expense are, in the opinion of the jury, the same."†

AN IMPORTANT CONSIDERATION.

The need of an undertaking being admitted, the next consideration is, its cost. In the matter of transportation, this consideration is paramount. If compelled to do business below cost, bankruptcy is merely a question of time. A knowledge of the cost is, therefore, ABSOLUTELY NECESSARY in order to fix *reasonable* rates. A tariff that would be extortionate, if charged upon the New York Central, might be no more than reasonable on the Colorado Central, where business is light and expenses are heavy. Granting this, were it shown that, in a region where construction cost largely and expenses are heavy, while traffic is light, the rates imposed are lower than the average of those found in any other State, would it not be manifest that injustice is being done?

It is not presumed that an accurate computation of the cost of moving a ton of freight one mile can be made; nor that, if approximated, it would be reliable; for, as observed by the Massachusetts Commission-

* Browne on the Law of Carriers, p. 82.

† Great Western Railway Company v. Sutton, H. of Lords, 38 L. J., Exch., 184.

ers, "the cost of moving freight varies, under given circumstances, at least as much as the cost of raising crops."*

In like manner, a committee of New England Railway Superintendents reported that "there were no reliable data on which the *exact* cost of transporting a ton of freight one mile could be based."† Nor will the precise cost be known until a railroad is built and operated exclusively for freight.

ELEMENTS OF COST.

But there are certain elements of cost contingent upon locality that are quite evident. When it is shown that, upon the lines operated by the Chicago & North-Western and Milwaukee & St. Paul Companies, an annual outlay of nearly two million dollars is required for fuel for locomotives, and that medium coal averages \$4 per ton in Wisconsin, while the Pennsylvania Railroad‡ pay only \$2 for the best quality, it is manifest that, in one important respect, the cost of transportation must be one hundred per cent. higher in Wisconsin than in Pennsylvania. This comparison extends to Illinois, Indiana and Ohio roads that traverse coal districts, some of which average \$1.40 § per ton. Perhaps it becomes still more apparent in view of the fact that of the sixty odd per cent. which the operating expenses of the North-Western and St. Paul railways bear to their earnings, the item of fuel constitutes twelve per cent.

In the same connection, expenditures for track repairs and renewals should be considered. They are the leading items of expense. Supplies are largely drawn from the East. Western roads must, therefore, pay in excess of Eastern roads the cost of carriage to the West. To that extent, therefore, their current expenses are larger.

Another element of increased cost is climatic. The Vice President of the Chesapeake & Ohio Railroad told Senator Windom's committee|| that they never had to stop their trains on account of snow, and it was very rarely that a rail broke on their road. How different the experience of Wisconsin railroads! During a "severe spell" they are blocked for days, traffic is suspended, and great losses are incurred. Steel tires fresh from the works and rails newly laid break like glass, which disasters no human foresight or ingenuity can prevent.

* Third Ann. Report R. R. Comrs., p. 167.

† Sixth Ann. Report R. R. Comrs., Mass., p. 79.

‡ Testimony of A. J. Cassatt, Transpn. Routes to Seaboard, Vol. II, p. 51.

§ Testimony of John Newell, Transpn. Routes to Seaboard, Vol. II, p. 85.

|| Transpn. Routes to Seaboard, Vol. II, p. 439.

As it does not appear that in any of the remaining items of expense the Wisconsin companies can effect a reduction compared with other roads, it is clear that the cost of railroad operations in that State largely exceeds that of roads more fortunately located.

INCOMPARABLY LOW RATES.

On what principle, then (conceding the power), should they be restricted to lower rates of fare and freight? That they are can be plainly shown. In order to anticipate any question that may arise as to the accuracy of the statements and comparisons made, the sources whence they are obtained are carefully noted.

The average rate on the several classes named in the present law is, for 150 miles, $2\frac{8}{100}$ cents per ton per mile. The rate for 150 miles is taken because that is the average distance that each ton of freight is hauled upon the leading railways of the State. But the showing is more favorable to Wisconsin than the distribution of traffic justifies. The average stated would be realized were an equal quantity of each class of freight carried. Such, however, is not the case. The lower classes predominate. Lumber is the main article of shipment. For 150 miles it is taken at $1\frac{4}{100}$ cents per ton per mile, and for 250 miles at less than $1\frac{1}{4}$ cents per ton per mile. This being the traffic upon which the companies mainly rely, it is evident they are compelled to do the major portion of their local business at less than one cent and a half per ton per mile!

No local rates so low and unreasonable prevail in any other State or country.

The railroads of Connecticut* average, on *all* freight, $6\frac{1}{2}$ cents per ton per mile; Maine,† $4\frac{1}{2}$ cents; Massachusetts,‡ $4\frac{1}{4}$ cents; seven Pennsylvania§ roads, 5 cents; twenty-three Ohio|| railroads, $6\frac{3}{4}$ cents, and the railroads of New York,¶ including the New York Central, $3\frac{3}{4}$ cents per ton per mile.

Turning to Europe,** the average rates per ton per mile are, in Belgium (where transportation is notoriously cheap), $2\frac{1}{4}$ cents; in France, 3 cents; in England, $3\frac{3}{4}$ cents, and in Germany, 4 cents.

* Rep. R. R. Comrs. Conn., 1875.

† Rep. R. R. Comrs. Maine, 1874.

‡ Rep. R. R. Comrs. Mass., 1875.

§ Auditor Gen'l's Report, Penn., 1874.

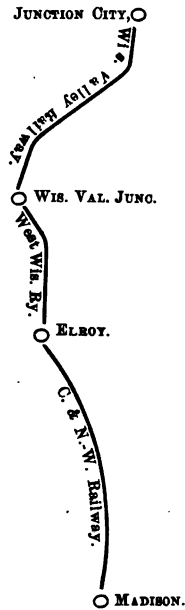
| Ohio Railway Rep., 1874.

¶ State Engineer's Rep., 1874.

** Royal Commission on Rys., pp. 71 and 72

HOW THE POTTER LAW OPERATES.

Startling as these contrasts may seem, the fifth section of the Potter law makes them yet more striking. It treats the several roads as though they constituted one line. Consequently, the road on which the shipment originates has the heavy end of the rate. Lumber comes from northern lines on to the St. Paul and North-Western roads. The result may be stated thus: A car load of lumber is shipped at Junction City, destined to Madison. The distance is 152 miles—53 on the Wisconsin Valley, 25 on the West Wisconsin, and 74 on the North-Western Railway.



The car load rate for the distance is \$23. If divided among the three roads in the order named in section four of the law, the

Wisconsin Valley	would receive for hauling it 53 miles,	\$14.50
West Wisconsin	" " " " 25 "	2.50
Chicago & North-Western	" " " " 74 "	6.00

Were this rate divided on a strictly pro rata basis—i. e., in proportion to the distance hauled on each line—the

Wisconsin Valley Railroad	would receive - - -	\$ 8.00
West Wisconsin	" " " - - -	3.80
Chicago & North-Western	" " " - - -	11.20

The results would be still different were these roads allowed the local rates named in the Potter law. Then the

Wisconsin Valley Railroad would receive	-	-	-	\$14.50
West Wisconsin	"	"	"	8.00
Chicago & North-Western	"	"	-	16.00

Obviously, the law abounds in inconsistencies. Dealers at Wisconsin Valley Junction would be charged \$14.50 for a car load of lumber from Junction City, whereas, if the car were destined beyond, the total rate as far as Elroy—twenty-five miles further—would not reach \$12.00. Why such discrimination against local shippers? Could there be anything more unjust? In one case the Wisconsin Valley Railroad would receive \$14.50 for hauling a car fifty-three miles; in the other—for the same service—the road would get only \$8.00. In either event, the West Wisconsin, for hauling this car from the Junction to Elroy, would not receive half the sum allowed the former road; while, if the Wisconsin Valley claimed the full amount prescribed by law—\$14.50—the West Wisconsin would receive only \$2.50 for the same service which, if the shipment began at the Junction and terminated at Elroy, would give the road \$8.00. Such inequalities, if perpetrated by a railway company, would not be tolerated.

Compared with other States, the lumber rate is unreasonably low. For 150 miles the car load rate is barely one cent and a half per ton per mile. In New England, where population is dense and traffic large, the published rate of the Vermont Central for lumber, 200 miles, is 3 cents per ton per mile, and the Boston & Albany, $3\frac{1}{4}$ cents per ton per mile; while in the West, where lumber is largely consumed, on leading Indiana, Illinois and Missouri roads, the average rate for 150 miles exceeds 3 cents per ton per mile. In other communities, therefore, under better conditions, the accustomed rates for lumber are 100 per cent. higher than the maximum rates allowed by law in this State.

This adverse comparison extends to grain and flour. While the rates current throughout the West average $3\frac{1}{2}$ cents for 150 miles, Wisconsin roads are limited to $2\frac{1}{2}$ cents per ton per mile.

THE COMPARISON OF PASSENGER RATES

is not any more favorable. The railroads of Connecticut* average $4\frac{1}{2}$ cents per mile; in Maine† they vary from 4 cents to 5 cents; fourteen

* Rep. R. R. Comrs. Conn., 1875.

† Rep. R. R. Comrs. Maine, 1874.

Pennsylvania* roads average $3\frac{1}{2}$ cents; Michigan† averages $3\frac{1}{2}$ cents; Illinois, 4 cents; Minnesota, 4 to 5 cents; while in the Upper Peninsula the rate is 5 cents, and in Colorado 10 cents per mile.

In Europe, passenger rates are invariably higher. Throughout England, they average 4 cents per mile; ‡ while upon the best traveled routes§—as from London to Brighton and London to Dover—the *through* rate exceeds 5 cents and 6 cents per mile.

On the Continent, rates average: in France, $4\frac{1}{2}$ to 5 cents, and in Austria, 4 cents.

Could it be shown that, at the rates now imposed, the Wisconsin railways were enabled to earn fair returns, some justification for their continuance might be claimed. But the depressing fact is, that no railroad in the State is in position to earn a dividend; while two only from their earnings meet current expenses and the interest on their indebtedness. Nor would they be in this exceptional position were it not for their operations in other States. This being the case, were it brought to the notice of the people of Wisconsin, it is believed they would not continue to accept

CHEAP TRANSPORTATION AT THE EXPENSE OF OTHERS.

Such, however, is the result. Apply the average Potter law rates to the business of either company for their last fiscal years, and the fact becomes apparent. That average is shown not to exceed $1\frac{1}{2}$ cents or $1\frac{3}{4}$ cents per ton per mile. Take the latter rate and apply it to the total number of tons moved one mile over the whole road of the Chicago & North-Western Railway for the last fiscal year—454,546,468 tons—and it would yield \$7,954,563.19, which is \$1,594,866.70 less than the company did earn on account of the higher rates received in other States. After paying operating expenses and interest on bonds, but no dividends, the company had a surplus of \$518,266.38. Deduct this amount from the deficiency above stated, and it is seen that, had the Potter law rates been applied to the entire business, the company would have closed the year with a deficit of \$1,076,600.32!

A like result would have attended the Milwaukee & St. Paul Company had the average Potter law rates been applied to their business for the same year. Their entire movement of freight was 259,168,248 tons one mile, which, at $1\frac{3}{4}$ cents per ton, would yield \$1,601,707.50

* Auditor Gen'l's Rep., 1874.

† Rep. R. B. Comr. Mich., 1875.

‡ London Ry. News, Feb. 6, '75, p. 187.

§ Transpn. Routes to Seaboard, Vol. I, p. 222.

less than the better rates obtained did produce. As the company, after paying operating expenses, interest on bonds, etc., had a net income of \$119,107.87, it is evident that, had they been reduced wholly to Potter law rates, they would have had a deficiency of \$1,482,599.63 as the result of one year's operations!

Nor does it appear that the companies with whose rates comparisons have been made are excessively remunerative. Massachusetts—where the highest rates of freight prevail—and Pennsylvania fall below five per cent.; Maine and Connecticut average $3\frac{1}{2}$ each; while in the West, Ohio does not reach 3 per cent., and only two roads in Indiana, four in Illinois, and four (leased) in Iowa pay any dividends whatever. Of the remainder, the majority are in the hands of receivers, directed by the Federal Courts.

To the reflective mind the situation is suggestive. In compliance with popular demand, a crushing blow has been struck. Beneath it a mighty industry lies prostrate. Provocation there may have been, complaints there doubtless were, yet they arose mainly from misconception. So rapidly had railroads grown, so far-reaching were their influence, and so little understood their operations, that apparent inequalities were magnified into grievous wrongs.

DISCRIMINATIONS

were made, but not all of them were unjust. Had the distinction been drawn, much trouble might have been avoided.

It is not strange that people wondered why freight should be carried past their doors cheaper than theirs was taken a less distance. Shippers at Eau Claire, for instance, saw no reason why they should pay as much to Chicago or Milwaukee as did the citizen of St. Paul. They did not consider that the Mississippi formed a natural highway between St. Louis and St. Paul, over which steamboats and barges plied freely, else would they have known that the railways from Chicago and Milwaukee must carry freight to St. Paul as cheaply as the boats would from St. Louis, or lose the business. Nor would the mere fact of St. Paul receiving lower rates necessarily work injustice to Eau Claire. It was an advantage the former had before the railway was built. Then, freight was carried to the nearest accessible point, and carted thence to Eau Claire. Had the railway from St. Paul terminated at Eau Claire, no complaint would have been made. Willingly would the citizens have paid the additional rate from St. Paul, because

they derived the benefit of the difference between the cost of having their freight carried by rail or teaming it from the river. But the road *was* extended through to the lake, whereupon the intermediate shippers demand that they be given advantages over those who always had an outlet; that is, the companies having spent millions of dollars in providing the interior places with a highway out of the wilderness, must also give them preference over those which the Almighty preferred when He established the water courses.

A POPULAR ERROR.

Moreover, the complaint is based on the mistaken belief that it always costs less to carry freight a short than a longer distance. This fallacy has repeatedly been exposed. "Distance," says the Massachusetts Commissioners, "has little to do with the cost of carriage;" and they add, "so obvious is this fact that corporations earn large net profits on their long business at one-third or one-quarter of that rate per mile which is barely remunerative on short business. The simple and obvious fact that wheels earn money only when they are in motion, and that they earn it as long as they are in motion, has constantly been disregarded by those seeking to frame laws regulating fares and freight."* The expense of loading and handling is the same, whether the freight be destined ten or one hundred miles. But the cost of moving local freight is greater than that of through freight. When a train of the latter is made up, it is sent through to its destination as rapidly as possible. It requires no way stations, and should not be charged with maintaining them. They are needed solely for local freight, which is delayed at every station where a car has to be taken on or off. Therefore it is that a local freight train timed to run one hundred miles in a day accomplishes less work than a through freight train that runs three hundred miles in the same time.

This question has frequently come to the notice of the New York Assembly. One complaint was that of a man who shipped three car loads of cattle from a station some twenty miles east of Buffalo, and was charged the rate from Buffalo. At that city the company had cattle yards, men to assist in loading, and the appliances for doing the business promptly; whereas, at the way-station there were no facilities. The cars had to be hauled there empty, and the whole train held while three cars were being loaded; or, the cars were left on side-

* R. R. Commr's' Rep. [Mass., 1873,] p. 56.

track to be loaded and taken on by a subsequent train. Clearly, it would have been cheaper to the company to have taken the freight at Buffalo.

Suppose a shipment were offered at a point where there is no station ; would it not be cheaper to the company to take it at a station, even though it necessitated ten or twelve miles' greater haul? And what is true in such case is alike true between leading stations, where facilities for large business exist, and intermediate stations, where traffic is light and conveniences are few.

JUST OR UNJUST.

The question as to whether charges are unjust depends not upon what price the company carries for others, but upon whether the charges in themselves are excessive or not.

This accords with the view taken by the Supreme Court of Missouri at their term last November. The right to alter or repeal any charter is reserved by the Constitution of that State. In 1872 an act was passed to prohibit unjust discrimination. Of this act, the Court say it "undertakes to define the obligations of railroad companies, and to declare that a charge for one distance, if it exceeds a charge for a longer one, is an unjust discrimination. It may be so, but whether it is or not is a question for the courts to decide, and not for the Legislature."*

So, also, the Supreme Court of Maine say: "The common and equal right is to reasonable transportation services for a reasonable compensation. Neither the service nor the price is necessarily unreasonable because it is unequal in a certain narrow, strict and literal sense."†

In the outcry, one important consideration was ignored. When, for instance, Sparta complained of being charged as much to Milwaukee as was LaCrosse, no account was taken of the fact that it was because the line ran through to LaCrosse that Sparta obtained so low a rate as she did ; for, had the road stopped at Sparta, and been without through business, the local traffic would have had to pay the entire expenses of the road. In proportion as a road is permitted to compete for through business, *to that extent* it is enabled the cheaper to do its local business.

* Sloan & Co. v. The Pacific R. R. Co. [not reported].

† McDuffee v. Railroad, 52 Maine, 451.

VARYING COST OF RAILWAY OPERATIONS.

As the cost is not uniform upon any one line, it follows that upon different roads there must be great variation. Yet the present law imposes the same rates per mile upon all the roads operated by each company. It will not be affirmed that the cost of operation is the same upon each one or upon any two of these lines. For the year ending December 31, 1874, the expenses per mile run varied, on the Milwaukee & St. Paul Railway, from \$1.17 on the LaCrosse Division to \$1.42 on the Prairie du Chien and \$1.46 on the Northern Divisions.

Similar differences prevail in other States. During 1874 the average cost of transporting a ton of freight one mile in New York varied from nine mills on the Erie and the New York Central to ten cents on the New York, Boston & Montreal Railroad; and, in the last report of the Louisville & Nashville Railroad, it is shown that the average cost of moving one ton of freight one mile varied from one and a quarter cents on the main line to over eight cents on their Glasgow branch. Like results are observed in Pennsylvania. According to President Scott's last report, the average cost of transporting a ton of freight one mile varies from seven mills on the Pennsylvania road to one cent and seven mills on their New Jersey lines. To enforce a uniform tariff where the cost of operating is so varying is clearly unjust.

A JUSTIFIABLE DIFFERENCE.

The equity of charging a higher rate of freight where the current expenses are much greater cannot be denied. Precisely such difference was made in Wisconsin two years ago. Reason sufficient existed, yet the act was bitterly denounced and made the pretext for the passage of the Potter law. The North-Western Company had completed their line from Madison north to a junction with the Minnesota system. In doing so they had surmounted stupendous obstacles. Three tunnels were built in one county. So rugged was the country and so heavy the work, that more money was expended upon the line than in the construction of any other between the lakes and the Missouri. Its grades are such that, with double power, less than one-half the load can be hauled that a single locomotive will carry over an ordinary road. Thus the cost per mile is four times that on a level road. Expenses being so much greater, and local business small, a slight increase over the rates charged on the Company's other Wisconsin lines was made. The result is well known. The event has passed into history,

and the candid inquirer must determine whether it was more just to ask higher compensation when the service cost largely and traffic was small, or to impose incomparably low rates regardless of cost.

For this action excuse could not be made that the railway companies would not reduce rates unless obliged to do so by law. The tendency had been constantly downward. On the Milwaukee & St. Paul Railway the average price per ton per mile had decreased from $4\frac{11}{100}$ cents in 1865 to $2\frac{33}{100}$ cents in 1874, and on the Chicago & North-Western from three and a half cents in 1868 to two and a half cents in 1873.

The effect of grades upon the cost of movement must be self-evident. Every teamster knows the difference between drawing a heavily loaded wagon on a smooth, level road, and hauling it over a hill. The difference upon railroads has been ascertained by actual tests. For every grade of twenty feet to the mile, the work required to overcome it is equivalent to that expended upon two miles of level road. Justly, then, the character of a road should be considered in establishing its tariff of rates.

AMOUNT OF BUSINESS AFFECTS COST.

To determine the cost at which freight can be taken, *it is essential* to know the probable amount to be carried. A large, regular business can be done cheaper than a small, occasional business. This fact a freight manager thus illustrates: "I had occasion to investigate two roads and to compare them. One did a business of some four hundred millions of tons one mile in a year; the other about fifteen millions. The difference was very great. The cost per ton per mile on the road that did the large business was about one cent; on the road that did the small business, it was about $5\frac{8}{10}$ cents. *The large amount of fixed expenses and the small amount of tonnage moved* caused the difference." *

Suppose a road carries one hundred millions of tons one mile in a year, at a profit of half a cent per ton per mile, and another road carries one million tons at one cent per ton profit, the one doing the large business will, at half the rate of profit, make five times the money the other does. What justice would there be in compelling the latter to carry its one million tons at the same or a less rate than the former receives for carrying one hundred millions? Precisely such rule is enforced in this State. Last year, the Pennsylvania and the New

* Transportation Routes to Seaboard, Vol. II, p. 32.

York Central Railroads each carried over thirteen hundred million tons of freight one mile against two hundred and fifty-nine millions carried by the Milwaukee & St. Paul and four hundred and fifty-four millions five hundred thousand by the North-Western; yet the Wisconsin companies, although their expenses are greater, were compelled to carry their small tonnage at lower local rates than the Pennsylvania, over which one hundred and twenty trains frequently pass daily,* and the New York Central, which has sixteen miles of freight trains daily!†

It is the transportation of such enormous quantities of freight that enables the Pennsylvania, New York Central and Boston & Albany Railroads to average each over \$40,000 gross earnings per mile, and to earn greater *net earnings* per mile than are the gross earnings of any two Wisconsin lines!

FREIGHT MOVEMENT LARGELY IN ONE DIRECTION.

The distribution of traffic in this State renders a fixed tariff especially burdensome. The movement of freight is largely in one direction. Timber is cut in the northern and consumed in the southern counties. Grain is carried eastward. The cars required for the service are usually sent out empty. Therefore, when a car load of lumber is offered, say at Tomah, or a cargo of wheat at Monroe, empty cars have to be sent there; thus making a double trip necessary to secure freight for one trip.

During the year 1874, the Milwaukee & St. Paul Railway hauled 1,251,234 tons eastward and only 484,321 tons westward. The cars requisite to carry this difference of 766,913 tons were hauled westward empty in order to be loaded. Had the Company been enabled to load the empty cars with out-bound freight at the best obtainable rates—however small—the money received would have been net gain. Cars and locomotives deteriorate as rapidly when idle as when in use.

Yet the inequality of business—in order to move the freight during the busy season—demands as large equipment as though it were constant. There might be facilities enough to move large quantities, yet the rates might not justify sending the freight. The market price of the commodity determines its movement. There is a point beyond which property cannot be moved without consuming its value. This was shown by a calculation made in Ohio when there were but few rail-

* Testimony of A. J. Cassatt, Trans. Route to Seab., Vol. II, p. 66.

† Speech of Hon. H. R. Pierson in N. Y. Legislature, Feb. 18, 1873.

roads in the State. It was seen that, at the prices then current in the East, a ton of corn at 170 miles, carried by wagon, became worthless, and at 330 miles wheat was valueless; while at the same distances, carried by rail, the corn was worth \$22 and the wheat \$44.

The highest courts concur in recognizing the

CONDITIONAL FAIRNESS OF UNEQUAL RATES.

Referring to such a case, one authority says: "The decision was given upon a principle of common sense founded upon the acknowledged fact that, if it cost a railway company less to carry the goods of one customer than those of another, they were entitled to make a reduction in favor of the former." * Likewise another jurist says: "The criterion for determining how far a charge is reasonable or not, is, to consider the trouble, expense and responsibility attending the receipt, carriage and delivery of the goods in question. Where these are equal, the charge should be the same; where they vary, the charge may fairly be varied in the same proportion." †

And in a leading case, it was held "that a company may charge different rates for transportation where the expenses thereof are different; and, as the expense of starting a train is the same for a long or short distance, this may fairly be taken into account and justify an inequality in the rates of carriage between different places." ‡

In like manner, when this question arose in Pennsylvania, it was held that "the charge might, under different circumstances, vary in amount without being, therefore, necessarily unreasonable. If reasonable, it may, though unequal, be unobjectionable." §

Again, railway companies were "justified in carrying goods for one person at a lower rate than for another in consideration of a guarantee of large quantities and full train loads at regular periods." ||

Also the propriety of a company charging more upon a branch line than upon their main line was clearly upheld, and it was declared that "to constitute undue preference, the unequal charge must be upon the same line or upon the same portion of the line." ¶

NECESSITY OF PRACTICAL KNOWLEDGE.

Consequently, an intimate knowledge of the varying conditions of each line is NECESSARY in order to prescribe *reasonable* rates. So

* Browne on the Law of Carriers, p. 258.

† Walf. Sum. Law of Rys., p. 317.

‡ Ransome v. Eastern Cos. Ry, 4 C. B. [N. S.], 63.

§ Camblos v. P. & R. Rd, 4 Brewster, 620.

|| Nicholson v. Great West'n Ry, 4 C. B. [N. S.], 366.

¶ Caterham Ry Co., 1 C. B. [N. S.], 410.

thought a Select Committee of Parliament when they reported: "This is a function which no government ought to undertake. It involves the necessity of determining what are the proper expenses of the companies and what economies they can practice. These are matters which require the knowledge, skill and experience of the managers themselves, and any attempt on the part of any government department to do it for them is impossible, unless the government were to undertake an amount of interference with the internal concerns of the company which is neither desirable nor practicable."*

With this intelligent view the Railroad Commissioners of Maine coincide. In their last report they say: "In the minds of those who give this subject the fairest consideration and possess knowledge enough of it to appreciate fully its difficulties, it becomes a conviction, more positive the longer it is dwelt upon, that the only sure way to obtain permanently low rates on railroad traffic--and especially on freight--is to leave the problem untrammelled by legislative enactments to those whose special business it is to study out *all* its intricacies."†

For, as a rule, the men who manage railroads are credited with shrewdness. That quality consists largely in a keen appreciation of self-interest—which consideration alone will impel them to develop their territory. Whatever conduces to its wealth augments the company's profits. Left to themselves, they will endeavor to create business by fostering new enterprises and encouraging the development of permanent industries. To this conclusion the English Parliament has arrived after thirty years of patient investigation.

TEACHINGS OF HISTORY.

"History claims it as her prerogative to offer instruction." With railways her experience has been large. Every State that has known them has sought to regulate them. The statute books are replete with futile enactments. In Ohio nine distinct tariffs of rates for transportation have been prescribed, of which the State Commissioner, in his report for 1870, said they were "the most fruitful source of complaint."

Illinois early sought to define what should be charged. The first attempts were either defeated or declared invalid. A subsequent measure devolved the task upon three Commissioners, who prepared one schedule for all the roads in the State alike. It has not been enforced.

* Ry. Cos. Amalgamation, p. xxv. /

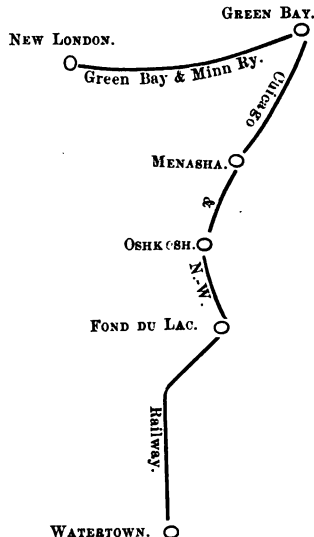
† R. B. Com'rs' Rep. [Maine] 1874, p. 18.

Iowa took the Illinois rates, reduced them ten per cent., and applied them to four trunk lines.

Minnesota, failing twice to establish fixed rates, re-enacted the common law.

The result has justified the Massachusetts Commissioners in saying: "It would appear that the more such measures are extended in their operation, the more complex they become, and the greater must be the difficulties in the way of their successful operation."*

To this rule the Potter law is no exception. A brief trial showed the need of amendment. Rates were fixed for each twenty-five miles; thus, when the haul exceeded twenty-five, fifty or seventy-five miles, the rate for the next twenty-five miles could be charged, even though the excess were but one mile. That provision was amended by inserting a rate per mile for the actual distance carried. Its operation gives some astounding results. Suppose a car load of lumber were carried, say thirty miles east on the Green Bay & Minnesota Railroad, and ninety-five miles south on the Chicago & North-Western.



The gross rate would be \$20—of which the former would receive \$4.80 and the latter \$15.20. But, if this lumber were to stop at Green Bay, the first named road would receive \$9—nearly double the

* R. R. Com'rs' Rep. [Mass., 1873], p. 63.

amount allowed it for the same haul when it takes the additional trouble of handing it over to another road !

Suppose, again, this shipment were sent five miles on the Green Bay Road and twenty-five on the North-Western. The gross rate would be \$9—which, on a pro rata basis, would give the North-Western \$7.50 and the Green Bay Road \$1.50 for handling the car load and hauling it five miles. Thus is ignored a principle which has hitherto been recognized in *every* freight tariff—an arbitrary rate for the first few miles to compensate for the expense and trouble of handling. In the charters of British railways it is covered by the “short distance” clause, which usually reads as follows :

“For articles or persons conveyed on a railway for a less distance than six miles, the company may demand the same tolls as for six miles, in addition to a reasonable charge for the expense of stopping, loading and unloading.”

Untaught by the failures recorded, Wisconsin likewise disregarded the

CAUTIOUS ACTION OF OTHER STATES.

In Massachusetts, where the railways are owned by the people who make the laws, the Commonwealth can assume control of a road only after it has been in operation twenty years, “by paying therefor the amount of capital paid in, with a net profit thereon of ten per cent. from the time of its payment by the stockholders to the time of the purchase.”

And in England, as early as 1844, Parliament enacted that if, after twenty-one years, any new railway had made ten per cent. for three years, Government might reduce the rates charged, but should at the same time guarantee the company ten per cent. net for the next twenty-one years. Such is the law of England, to-day. Ten per cent. guaranteed where money is plenty at three per cent., while in Wisconsin, looking to foreign capital for its development, the most beggarly return is denied !

Railway investments are precarious. Unlike personal property or real estate, they are not disposable at will ; therefore, should they have ample security. So thought the New York Legislature when they adopted the English rule in their general railroad law, the thirty-third section of which reads :

“The Legislature may, when any such railroad shall be opened for use, from time to time alter or reduce the rate of freight, fare or other

profits upon such road ; but the same shall not, without the consent of the corporation, be so reduced as to produce with said profits less than ten per cent. per annum on the capital actually expended ; nor unless, on an examination of the amounts received and expended, to be made by the State Engineer and Surveyor and the Comptroller, they shall ascertain that the net income derived by the company from all sources for the year then last past shall have exceeded an annual income of ten per cent. upon the capital of the corporation actually expended."

In Pennsylvania, legislation has taken the form of prescribing maximum rates ; yet the companies most restricted are allowed to charge an average of four cents per ton per mile. That rate of toll is named in the charter of the Philadelphia and Reading Railroad, which road averages a daily freight tonnage of thirty-five thousand tons, making a train sixteen miles in length. "And such a train," says the President, "is coming down the road every day."

The railroads of New Jersey, by general law, are authorized to charge ten cents per ton per mile.

In Ohio, the railroads are unlimited up to thirty miles, beyond which they are authorized to charge five cents per ton per mile.

The six leading railroads of England are empowered to charge six cents per ton per mile. So careful has been the action in this regard that a Parliamentary committee said of these rates : "They are always fixed so high that it is or becomes, sooner or later, the interest of the companies to carry at lower rates."*

PROSPEROUS ROADS A PUBLIC BENEFIT.

Railway owners are not alone concerned in the maintenance of their property. Profitless roads cannot meet the wants of their patrons. Considerable margin above expenses is required to keep a road in safe running order. To a Parliamentary committee this was evident ; therefore they say : "Where a company pays little or no dividend on its original capital, the working expenses are often cut down injuriously. Danger arises from insufficient service, and the risk of present loss attending any reduction of fares, even with the fairest expectation of future profit, is a bar to liberality of management. For the public advantage it is desirable that a railway should yield reasonable returns to those under whose control it is placed."†

* Ry. Cos. Amalgamation, p. xxxiv.

† Royal Commission on R'ys, p. xxiii.

By wear and tear a railway will depreciate ten per cent. yearly. To that extent companies that are able make renewals.*

To omit making these renewals would be held to be criminal negligence. Yet to make them will require large outlays. These are chargeable to the business of the road. They are part of the current expenses, and should be defrayed out of the gross earnings. But the Potter law rates preclude this. Thus, Wisconsin law operates to impoverish the roads, render them unsafe, then punish the companies for becoming so!

CAPITALISTS ALARMED.

Neither has the State benefited by the law. Wherever capitalists meet, its baleful effects are known and appreciated. They deem its passage an act of dishonesty. Their impressions are conveyed to the State Department through its agents abroad. Writing from Rotterdam, the Consul says:

"The laws recently enacted in Wisconsin concerning railroads have just affected those securities in which the Dutch capitalists had invested enormous sums, namely, the Chicago & North-Western and the Milwaukee & St. Paul railroads. As yet, the holders of these bonds still believe that the hopes created and entertained by the directors of these railroads will be realized, and that those laws will be annulled by the Supreme Court. Should this not be the case, a new depreciation of these securities, as well as of all other American railroad bonds may be expected. For years to come no investment of Dutch capital in United States railroad enterprises will be made. Financiers who, in this country, have been dealing in United States railroad securities, agree in declaring that a revival of confidence in American railroad enterprises can only be expected when a radical change of the present legislation on railroad companies takes place in the different States."†

Were Wisconsin beyond the need of foreign credit, she might possibly afford to repel it. But with the northern part of the State unbroken, and her vast resources lying dormant, it would seem unwise to bar out the means necessary to develop them. Capital can no longer be drawn hither by specious statements. The promise of fair returns will avail nothing unless there is positive assurance that the public guarantees will be honored. "The Germans believe that they have been deceived and defrauded," writes the Consul at Frankfort to Secre-

* Transportation Routes to Seab., Vol. II, p. 50.

† Commercial Relations [1874], p. 902.

tary Fish. "They also find that sovereign States deny and disregard their guarantees; that, from the distance, they seem indifferent to them, and almost seem disposed to forget their liabilities, or to wholly avoid their payment." And he adds: "The capital of Europe has been turned toward the United States on account of the prospects and hope of higher interest. Now the interest offered by European enterprises is equal to the usual rates of interest in the United States. Hereafter this capital will find abundant use in its own country."*

Still later, the same Consul says: "Extreme caution has been the rule of action;" and after remarking that "Frankfort continues to be the central banking city of Europe," he adds: "I regret, however, that American securities, other than those of the United States Government, are still regarded with suspicion."†

In the light of these facts, and the growing needs of the State,

WHAT SHOULD WISCONSIN DO?

The Potter law has retarded her progress. It has injured the State in the esteem of the world. Capital avoids her. Without credit she cannot advance. Minnesota quickly retracted her restrictive law. Wisconsin should do likewise. Thus would confidence be restored and a simple act of justice be done. For transportation is a commodity, and is sold as are other services. If its price can be fixed by law, so can that of other commodities furnished by associated capital. If rates for railway service are to be arbitrarily fixed, why not extend the control to other associations, and prescribe the price of board at hotels, the rate at which newspapers shall advertise and insurance companies take risks? In New England, less than a century ago, the price of labor and the products of labor were limited by law. "Such good orders," says Hubbard, "expired with the first golden age in this world." Civilization is thought to have made some progress, and legislators are believed to be wise as they are strong, and just to all.

The rates of fare and freight enforced by law in Wisconsin are indefensible. They are proven to be unreasonable. The railways are compelled to furnish transportation below cost. In view of which, Edmund Burke's utterance is pertinent and true to-day: "Men have no right to what is not reasonable."

J. W. MIDGLEY.

* *Commercial Relations* [1873], p. 379.

† *Commercial Relations* [1874], p. 440.

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